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# In the Supreme Court of the United States

OCTOBER TERM, 1962.

No. 94.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
*Petitioners,*

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
*Respondent.*

## PETITIONERS' REPLY BRIEF.

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## PETITIONERS' REPLY BRIEF.

## ARGUMENT.

The principal question presented by the petition for certiorari in the instant case is stated broadly. It refers to persons employed by a carrier subject to the Railway Labor Act and puts the question whether such employees are forbidden by the Railway Labor Act to seek the settlement of a dispute with their employer by resorting to a strike *after* the dispute has been made the subject of an award by the National Railroad Adjustment Board in favor of the employees and the award has not been made effective by the carrier, for one reason or another.

The respondent seeks to create an issue as to what groups or crafts or classes of employees of one employer may associate together for the purpose of attempting to persuade their employer to settle a grievance by asserting economic forces against their employer as a part of the negotiation and settlement process. This issue will probably need to be decided by this Court if it decides the present issue in this case in favor of the employees by holding

it is an unwarranted presumption to conclude that Congress intended to outlaw the use by employees of economic weapons against their employer under the circumstances prevailing in this case simply because Congress saw fit to authorize employees to use the judicial process in the manner and for the purpose described in Section 3, First (p), of the Railway Labor Act.

This issue is raised and discussed at pages 54 to 60 of respondent's brief.*

The respondent's proposition amounts to this: An individual employed by the L & N Railroad as a locomotive engineer, or as a conductor, or a trainman, has no legal right to be interested in a dispute between another employee working as a fireman and their common employer, in which the question at issue is whether the fireman, having been wrongfully discharged and later returned to his job, is entitled to be paid the wages he would have earned had he not been wrongfully held out of service, or is en-

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* The representatives of the engineers', conductors', and trainmen's crafts became parties to the dispute between the respondent and the firemen's crafts as the result of a letter dated June 26, 1958, written by the respondent's Director of Personnel, Mr. W. S. Scholl, to the firemen's General Chairman, Mr. Jake Paschall, in which the Director of Personnel declared, "Never has a discipline rule under any agreement this Carrier has with its various classes of employees, including Article 31 of the Firemen's Agreement, been construed on the property as prohibiting deduction of outside earnings," and citing instances involving claims by conductors, firemen and yardmen (trainmen) in support of this statement. (R. 56a.) General Chairman Paschall furnished copies of this letter to the General Chairmen of the engineers', conductors', and trainmen's crafts and invited them to participate in future conferences with the respondent's officers. At the next conference, held on July 7, 1958, all four general chairmen were present and participated in the argument, without any record of objection by the respondent's officers to the assembly of general chairmen. At this conference the respondent's officers emphasized to the four general chairmen that henceforth it would insist on deducting outside earnings from any money award rendered in favor of any employee represented by any of the general chairmen participating in the conference. (R. 40a-41a.)

titled to be paid only such compensation as the rules of damages applicable to a breach of contract at common law entitled him to receive?

The dispute between the parties to this litigation has been progressed through the settlement process required by the Railway Labor Act, and the designated representatives of the engineers, the conductors, and the trainmen employees have participated in conferences and correspondence conducted by and between designated representatives of the firemen and of management. Out of those negotiations has come the decision by the employees' representatives that strike action must be employed if the dispute is to be brought to an end by an agreement between the disputing parties. The respondent's contention is that those employees working as engineers and conductors and trainmen are forbidden by the Railway Labor Act to associate with the employees working as firemen for the purpose of employing economic weapons against their employer under these circumstances.

The Court will note that respondent does *not* assert, in support of this contention, that the employees' representatives have not made sufficient effort to settle the dispute by negotiating and bargaining to satisfy the requirement of the Railway Labor Act.

The Court will also note that respondent does *not* contend that the engineers, conductors, and trainmen are working under collective agreements which do *not* contain rules under which disputes substantially like the dispute between the firemen and the employer can arise. The record negatives any possible contention of this nature, because the record discloses that these collective agreements do contain rules that are substantially the same as the firemen's agreement contains on the subject of discipline or discharge of employees and their restoration to service. (R. 73a, 77a and 80a,)

The Court will also note that respondent does *not* assert that when disputes of this nature arise in the future involving engineers, conductors, and trainmen, the management will not insist upon applying the common law rules of damages to the employees' claim for reimbursement for time lost from their employment. The record discloses that repeated declarations have been made by the respondent's highest personnel officers that when claims of this nature develop among engineers, conductors, trainmen, and also other crafts or classes of L & N employees, these employees will be met with the same firm insistence that Humphries now faces, that his claim for wages for lost time shall be controlled by the common law rules of damages. These declarations by the respondent's officers occurred during conferences with the employees' representatives held on July 7, 1958, on July 30, 1958, and on January 23, 1959. (R. 41a, 45a.) They were repeated, in substance, in a letter dated August 9, 1958, directed to General Chairman Paschall (R. 61a-65a), and in the respondent's third submission to the Adjustment Board, dated January 23, 1959. (R. 3b to 17b.)

Notwithstanding these circumstances, the respondent contends that the engineers, conductors and trainmen employees may not associate with the firemen for the purpose of progressing this dispute to a settlement. Such cooperation is forbidden by the Railway Labor Act, respondent contends, *because among the engineers, the conductors, and the trainmen there are no employees with claims similar to Humphries' claim that are presently the subject of a dispute with management.* The respondent summarizes its proposition in this manner:

> "As the strike of BLE, ORC&B and BRT concerns no pending claims involving the agreements with BLE, ORC&B and BRT and no award involving them that

> has not been complied with, there is no 'labor dispute' involving them within the terms of the Railway Labor Act or the Norris-LaGuardia Act. Therefore, those unions have no right to strike and, were they to strike, they would not only interfere with interstate commerce but cause irreparable injury to the public and to the railroad." (p. 58, L & N brief.)

When did the law become established that one employee may not cooperate with another employee in progressing a grievance with their common employer to a conclusion, including the use of economic force, when the two employees are employed in different collective bargaining groups or crafts or classes? The respondent does not provide the answer to this question.

The respondent points to no specific provision in the Railway Labor Act as the source of this alleged limitation on the right of employees of one carrier to associate and join in concerted action when necessary to progress a dispute, growing out of one employee's grievance, to a satisfactory settlement. The petitioners are certain that there existed no such limitation on the right of railway employees to cooperate and join forces prior to the enactment of the original Railway Labor Act in 1926. (See pages 5 to 13 of petitioners' Separate Appendix.) And petitioners are not aware that such limitation can be found in the original Railway Labor Act, or was added by the 1934 amendments to that Act.

The respondent points to no court decision, as authority for its contention, in which the facts and the questions of law were similar to those involved in the present case. But respondent does rely on the case of *Brotherhood of Railroad Trainmen v. New York Central R. R.*, 245 F. 2d 114 (cert. denied, 355 U. S. 877), as authority for its contention. That case presented the question whether

railway employees could lawfully engage in a strike as a protest to a decision made by management that it would cease switching operations in a railroad yard at Toledo, Ohio, and transfer such operations to another yard. That case does not remotely involve the question of law under consideration here.

We take this occasion to point out that the rule of law promulgated by the District Court and the Court of Appeals for the Sixth Circuit in the *New York Central* case represents a new advance in the judicial curtailment of the right of working men to engage in concerted action for their mutual aid and protection. The courts when deciding that case began their reasoning on the premise that the Railway Labor Act recognizes only two kinds of disputes developing between railway management and railway employees. One kind of dispute grows out of attempts to negotiate collective agreements governing rates of pay, rules, and working conditions. The other kind of dispute involves issues concerning the interpretation of rules of employment and their proper application to a specific set of facts.

These are the so-called "major disputes" and "minor disputes" of the railway industry. From this premise the courts in the *New York Central* case simply jumped to the conclusion that unless a dispute fits into one or the other of these two categories of disputes, the Railway Labor Act does not recognize it to be a proper and lawful form of "labor dispute." Hence, the courts concluded, such disputes are impliedly outlawed by the Railway Labor Act and may not be the object of strike action by employees.*

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* The very language of the Railway Labor Act negatives the conclusion that legitimate labor disputes in the railway industry must fit into either of two categories.

(Continued on following page)

This *ratio decidendi* led the courts of the Sixth Circuit to a novel conclusion—a conclusion, we submit, that will prove to be erroneous when applied to many of the employer-employee conflicts that arise in the railway industry.

The respondent's contention in the instant case is a "refinement" of the conclusion reached by the courts in the *New York Central* litigation, in the sense that it seeks to further narrow the definition of "labor dispute." Respondent contends that the instant controversy cannot be a "labor dispute" growing out of the interpretation and application of a collective agreement, because a labor dispute of this nature must necessarily be based upon an existing grievance asserted by an employee working within each separate craft or class of employees that is party to the controversy.

The respondent does not deny that the controversy between it and the representatives of its engineers, conductors, and trainmen involves the interpretation and

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The "General Purposes" provisions and Section 2, First, and Second, of the Railway Labor Act recognize there are other kinds of legitimate and lawful labor disputes than those that stem from efforts to negotiate collective agreements governing the terms of employment for the future, and arise from differences of opinion regarding the proper interpretation and application of collective agreements. The Act states that such other disputes shall also be the subject of bargaining between carriers and their employees in order that they may not lead to the interruption of interstate commerce.

See, for example, clauses (4) and (5) of the "General Purposes" provisions, which state that the Congress enacted the Railway Labor Act to provide for, among other purposes,—

"the prompt and orderly settlement of *all disputes* concerning rates of pay, rules, or working conditions;"

"the prompt and orderly settlement of *all disputes* growing out of *grievances* or out of the interpretation or applications of agreements covering rates of pay, rules, or working conditions."

application of a rule of employment contained in the collective agreements applicable to these three crafts. Neither does the respondent deny that the controversy is taken seriously by both sides—so much so as to cause the respondent to engage in years of litigation and in proceedings before the Adjustment Board in an effort to keep its engineers, conductors, and trainmen at their jobs.

We suggest that the pendency of a grievance by an employee based upon a past alleged violation of a collective agreement contributes in no material way to the propriety of the dispute or the reality of the issue. We suggest that proof that a labor dispute involves a genuine controversy, and that it is ripe for settlement by negotiation and compromise, is provided by the fact that the dispute exists.

The respondent's contention implies that officers of railroad companies and officers of railway organizations devote time to academic disputes regarding the manner in which a schedule rule should be applied. If a serious controversy of this nature develops between railway management and the representatives of its employees, the fair implication is that these experienced parties apprehend that the issue between them will take the form of active claims in due time if the issue is not settled by agreement beforehand, and that the addition of active claims to the issue can have no other effect than to heighten the difficulty of making concessions and arriving at an acceptable compromise or settlement of the controversy.

The respondent's contention cannot be justified on the assumption that because Humphries is employed as a fireman, only employees working as firemen can have a direct interest, or a potential personal interest, in the manner in which the schedule rule is ultimately interpreted and applied to Humphries' claim for reimbursement for time

lost. Such assumption is obviously not true. As previously stated, the collective agreements governing the employment of engineers, conductors and trainmen contain rules that read substantially the same as Article 31 of the firemen's agreement. The next man who finds himself in Humphries' position is as likely to be an engineer, a conductor, or a trainman, as he is to be a fireman. And the L & N has been at pains to make clear to the representatives of these employees that it will pay claims to these employees for time lost whenever they develop, subject to the same common law rules of damages as it now insists must govern Humphries' claim.

These facts refute any argument that the personal interest and the stake that the engineers, conductors and trainmen have in the terms that settle the Humphries' claim are a whit less than the interest and stake that employees working as firemen have in this settlement.

Furthermore, assuming it were true, for one reason or another, that no claim for time lost similar to Humphries' claim could arise among the engineers, conductors, and trainmen employees, these petitioners have always supposed that the employees of one employer may lawfully assist each other by attempting to match the economic strength of their employer when trying to achieve the satisfactory settlement of their respective grievances, in precisely the manner described by Judge Learned Hand in the case of *N. L. R. B. v. Peter Cailler Kohler Swiss Chocolates, Inc.*, 130 F. 2d 503 (1942), wherein he said:

> "When all the other workmen in a shop make common cause with a fellow worker over his separate grievance, and go out on strike in his support, they engage in a 'concerted activity' for 'mutual aid and protection,' although the aggrieved workman is the only one of them who has any immediate stake in the outcome. The rest know that by their action each one

> of them assures himself, in case his turn ever comes, of the support of the one whom they are all then helping; and the solidarity so established is 'mutual aid' in the most literal sense, as nobody doubts. So too of those engaging in a 'sympathetic strike,' or secondary boycott; the immediate quarrel does not itself concern them, but by extending the number of those who will make the enemy of one the enemy of all, the power of each is vastly increased. It is one thing how far a community should allow such power to grow; but, whatever may be the proper place to check it, each separate extension is certainly a step in 'mutual aid and protection.' Cf. *Fort Wayne Corrugated Paper Co. v. National Labor Relations Board*, 111 Fed. (2d) 869, 873, 874 (CCA 7). It is true that in the past courts have often failed to recognize the interest which each might have in a solidarity so obtained (e.g. *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 471, 472, 474), but it seems to us that the act has put an end to this." (103 F. 2d 503, at 505.)

The respondent's purpose in contending that only those employees working as firemen may join forces in seeking a satisfactory settlement of the Humphries' claim is, of course, manifest. The respondent seeks to achieve overwhelming power in disputes with its employees by the establishment of a rule of law that will enable it to pursue a "divide and conquer" policy. If there is a law that serves this purpose, the respondent must surely bear the burden of identifying it convincingly. These petitioners believe that a rule of law to this effect cannot be distilled from the Railway Labor Act by the process of interpretation. It will have to be "legislated."

This Court has had occasion to declare that an "accommodation" must be made between the provisions of the Railway Labor Act and the Norris-LaGuardia Act.*

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* *Bro. of Railroad Trainmen v. Chicago R. & I. R. Co.*, 353 U. S. 30, at 40.

This requirement would seem to mean that the purpose which the Congress sought to achieve by the enactment of one of these Acts has a bearing or influence upon the manner in which the other Act is to be interpreted and enforced. When the employees of a single employer undertake to join forces for mutual aid and the promotion of their welfare by progressing a dispute between certain of these employees and the employer, using their economic strength if necessary, to achieve a satisfactory settlement, and the employer tries to prevent this cooperation by seeking a court injunction on the ground that the employment of economic forces against the employer is unlawful because no "labor dispute" exists between the employer and the major portion of the cooperating employees, it would seem that the Congressional declaration of what constitutes a "labor dispute" for the purpose of the Norris-LaGuardia Act would be a proper guide in determining what constitutes a "labor dispute" for the purposes of the Railway Labor Act under these circumstances.

A "labor dispute" for the purposes of the Norris-LaGuardia Act has been defined about as broadly and comprehensively as the purpose of this law permits. We quote the relevant parts of this definition, as follows:

> "(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; * * *."
>
> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of em-

ployment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." (29 U. S. C. Sec. 113.)

The instant dispute between the representatives of the engineers, conductors, and trainmen, and the respondent is quite evidently "*a controversy concerning terms or conditions of employment.*"

The term "controversy" is customarily accorded a broad meaning. It normally comprehends more than the terms "claim" or "grievance." There would seem to be little need to debate the conclusion that a genuine controversy may exist between the employer and representatives of its employees regarding the manner in which a rule of employment shall be interpreted or enforced without at the same time pressing a claim for money on behalf of an employee based upon a past violation of the rule.

Also, according to the definition of "labor dispute" in the Norris-LaGuardia Act, the persons that may properly be party to a labor dispute are not limited to the employees comprising one collective bargaining unit. Those who may be party to a "labor dispute" are the "employees of the same employer." They may include all persons who have a "direct or indirect interest" in the controversy, or persons who are simply "engaged in the same industry, trade, craft or occupation."

In light of the foregoing, there can be no serious debate over the conclusion that the instant controversy between respondent and the representatives of its engineers, conductors and trainmen constitutes a legitimate "labor dispute," if the provisions of the Norris-LaGuardia Act are looked to as an indication of the Federal labor policy governing the right of employees to associate together and

join forces for their mutual aid and the promotion of their welfare as employees.

While we recognize that the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947, does not govern employers and employees in the railway industry, yet such provisions as that Act contains relative to the right of employees to associate and cooperate for their mutual aid and protection can be said to be indicative of the Federal labor policy bearing upon this subject and has some relevancy to the ruling that the respondent would have this Court make. Section 7 of that Act, to the extent pertinent here, reads as follows:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. * * *" (29 U. S. C. Sec. 157.)

The term "employee" is defined by this Act, to the extent relevant here, as follows:

> "(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise. * * *" (29 U. S. C. Sec. 152(3).)

"Labor dispute" is defined in the National Labor Relations Act in the same manner that it is defined in the Norris-LaGuardia Act, with the exception of one word being added which does not alter the sense of the definition for the purposes of the present discussion. We find nothing in the National Labor Relations Act that would affirmatively support the respondent's contention if this argument were being advanced by the respondent as an employer subject

to this Act. The language of this Act implies a policy that is in fact *opposed* to the respondent's contention. This conclusion is based upon the declaration of employees' rights contained in Section 7, to the effect that "*employees shall have the right to self-organization * * * to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,*" when read with the statement in the definition of employee that the term "employee" "*shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise.*"

An extensive search of court decisions by these petitioners has failed to turn up any instance in which an employer subject to the National Labor Relations Act has challenged, in the courts, the right of its employees comprising a collective bargaining unit to join forces with employees in another collective bargaining unit for the purpose of progressing the settlement of an individual employee's grievance against their common employer to a conclusion. One case, however, has arisen under the National Labor Relations Act which presents the question whether a number of employees, having a grievance against their employer caused by the failure of their employer to provide satisfactory working conditions, are protected by Section 7 against discharge when the employees engage in a walkout as a protest against their working conditions *before* they have lodged a formal complaint with their employer and allowed him a reasonable opportunity to correct the condition or to engage in negotiations regarding their grievance. The case referred to is *N. L. R. B. v. Washington Aluminum Company*, 370 U. S. 9 (1962). The grievance in this case was caused by the employer's failure to provide the employees with a comfortably heated

place in which to work. The grievance matured on an exceptionally cold day in January, 1959, although individual employees had on a number of earlier occasions passed critical remarks to the foreman about the cold working conditions. On the day of the walkout the weather was unusually cold and the shop extraordinarily uncomfortable. When the day shift reported for work at 7:30 A. M., they proceeded to discuss the situation and all of the employees except one agreed that they would return to their homes in the hope that their action would cause the employer to start providing a reasonable amount of heat.

The employer promptly discharged all employees who participated in the walkout, the explanation given being that the employees had violated an established rule of the shop which forbade employees to leave their jobs without permission from the management.

The employer was charged by the N. L. R. B. with committing an unfair labor practice by violating Section 8(a)(1) of the Act. This provision forbids employers "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." (29 U. S. C. Sec. 158 (a) (1).) Following a hearing, the Board determined that the employer had committed an unfair labor practice as charged. The employer was ordered to reinstate the employees and "make them whole for losses resulting from the unlawful termination of their employment." The employer declined to comply, and the Court of Appeals for the Fourth Circuit refused to enforce the Board's order. In the enforcement proceeding the employer contended that the employees could not lawfully leave their employment in a strike unless there existed between them and the employer a "labor dispute" within the meaning of this term as defined in Section 2(9) of the

Act. And, the employer contended, there can be no "labor dispute" if the employees have not made a formal demand upon their employer that he settle or satisfy a grievance.

On appeal to this Court the judgment of the Court of Appeals was reversed. This Court held that the fact that the employees left their employment before they had made a formal request to their employer to remedy the conditions which aggrieved them did not nullify the right of these employees, protected by Section 7 of the Act, to engage in concerted activities for their mutual aid and protection. This Court's ruling was stated as follows:

> "We cannot agree that employees necessarily lose their right to engage in concerted activities under Section 7 merely because they do not present a specific demand upon their employer to remedy a condition they find objectionable. The language of Section 7 is broad enough to protect concerted activities whether they take place before, after, or at the same time such a demand is made. To compel the Board to interpret and apply that language in the restricted fashion suggested by the respondent here would only tend to frustrate the policy of the Act to protect the right of workers to act together, to better their working conditions." (370 U. S. 9, at 14.)

We think it reasonably certain that if the present controversy between the respondent and the representatives of its engineers, conductors and trainmen were subject to the provisions of the National Labor Relations Act, the reasoning upon which this Court's decision rests in the *Washington Aluminum Company* case would lead to a similar conclusion in the instant case. Since the parties here are engaged in a serious controversy over a matter of substantial importance to the employees, and since the respondent has been adequately informed regarding the manner in which the employees desire and expect to be

treated when they present claims for pay for lost time caused by being wrongfully disciplined or discharged, and since this controversy is as readily subject to negotiation and final settlement now as later, the conclusion to be drawn is that a "labor dispute" does in fact exist, and concerted action by the employees at this time to persuade the respondent to settle the controversy now, once and for all, is concerted action of the kind protected by Section 7.

The instant dispute between the respondent and its engineers, conductors and trainmen is a genuine and serious dispute. The respondent's officers understand that the representatives of the employees that are party to this dispute seek a settlement which will not establish a precedent opposed to their view, which is that the discipline and damage rules in their collective agreements should be interpreted and enforced according to their literal language.*

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* A rule of damages in a collective agreement applicable to railway employees, when interpreted and enforced in the manner that the petitioners contend Article 31 (f) should be interpreted and enforced, is a valuable rule from the employees' point of view. This is true primarily for two reasons. One reason is that an employee in one of the operating crafts has but slight prospect of finding temporary employment on other railroads while he is being held out of service. This is true because of the effect of the seniority system that prevails on virtually all railroads. The seniority system enables the employee with the greater seniority to outbid junior men when jobs are vacated and are open for bids. The job must go to the senior man among those bidding on the job. An employee working away from his home territory, either on a foreign railroad, or on his home railroad but on a foreign seniority district, takes the bottom position on the seniority roster. Moreover, it is common practice for railroads to have a number of employees in each craft at the bottom of the seniority roster for whom there is no work and who are waiting to be called back to service. Furthermore, the training and skill possessed by locomotive firemen and engineers is rarely usable in other crafts or trades.

But much more important to employees than these considerations is the fact that Article 31 (f) is an effective deterrent against the tyranny of an employer prone to discharge employees for

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The employees and their representatives, on the other hand, have been provided by management with a clear understanding of the rule by which the respondent will measure its obligation to reimburse them for lost time if the present controversy is concluded by L & N applying the common law rules of damages to Humphries' claim.

The petitioners submit that this situation presents a proper "labor dispute" within the framework of the Railway Labor Act. This controversy represents an undertaking on the part of these employees that is wholly consistent with the requirements of the Railway Labor Act. The propriety of this undertaking would not be more complete and consistent with the requirements of the Act if there were now pending a dozen or a hundred claims by engineers, conductors and trainmen similar, and in addition, to Fireman Humphries' claim. The only contribution that the pendency of such claims would make to the instant controversy would be to widen the gap which the parties must bridge by bargaining and compromise before they can bring this controversy to an end.

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slight reasons or dubious reasons. When management is aware that if it errs in disciplining or discharging an employee it will be obliged ultimately to pay such employee the wages he would have earned had he not been taken out of service, while some other employee has in the meantime filled the vacancy and been paid for his services, management has an incentive to be certain of its grounds when it decides to discipline or discharge an employee.

## CONCLUSION.

The petitioners submit that unless this Court finds in the Railway Labor Act some clearly implied restriction on the right of employees to associate and engage in concerted action for the purpose of persuading their common employer to settle the grievances of individual employees in a satisfactory manner, this Court should reject the respondent's contention.

Respectfully submitted,

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